



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



REPLY TO THE ATTENTION OF:

C-14J

July 16, 2003

Via Certified Mail
Return Receipt Requested

David A. Mikelonis
Senior Vice President and General Counsel
Consumers Energy, Co.
212 W. Michigan Avenue
Jackson, Michigan 49201-2236

Re: Request for Information Pursuant to Section 104(e) of CERCLA
for Allied Paper/Portage Creek/Kalamazoo River Superfund Site in
Kalamazoo and Allegan Counties, Michigan

Dear Mr. Mikelonis:

As you may know, the U.S. Environmental Protection Agency ("U.S. EPA" or the "Agency") recently assumed the enforcement lead for various operable units of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the "Site"), which is located in Kalamazoo and Allegan Counties, Michigan. The Site includes six paper mill properties, five paper residual disposal areas, approximately 80 miles of the Kalamazoo River from Morrow Lake Dam downstream to Lake Michigan, and the floodplains and wetlands adjacent to the River.

The Agency has begun to supplement the investigation into the nature, extent and sources of contamination in the Kalamazoo River conducted to date by the Michigan Department of Environmental Quality ("MDEQ"). The primary contaminants of concern at the Site are polychlorinated biphenyls ("PCBs"). U.S. EPA understands that Consumers Energy Company ("Consumers Energy") owns and operates several facilities in Michigan which are located near or adjacent to the Kalamazoo River, its tributaries or Morrow Lake. Additionally, the Agency has received information from the National Response Center regarding the potential release of PCBs from transformers owned by Consumers Energy in the vicinity of the Site. These potential releases may have been the result of powerline or transportation accidents. Accordingly, U.S. EPA believes that Consumers Energy may have information relevant to this investigation.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA") gives U.S. EPA the authority to assess contaminated sites, to determine the threats to human health and the environment posed by contaminated sites, and

to clean up those sites. Under § 104(e)(2) of CERCLA, U.S. EPA has authority to gather information and to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility;
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility;
- C. The ability of responsible parties to pay the cost of the clean up.

Information requests are in Attachment 1.

U.S. EPA asks that Consumers Energy provide information and documents relating to contamination at the Site. The relevant time period is from 1929, the year PCBs were first introduced into the environment, until the present. Consumers Energy should respond completely and truthfully to this Information Request as soon as possible, but not later than sixty (60) days from the date of receipt of this request. Instructions for completion of a response are in Attachment 2; definitions of terms used in this Information Request are in Attachment 3. Please note that the definition of "facility" specifically includes transformers and conductors owned or operated by Consumers Energy. Unless otherwise defined, all terms used in the Information Request have the same meaning ascribed to them in CERCLA or the National Oil and Hazardous Substances Pollution Contingency Plan.

Consumers Energy may consider some of the requested information to be confidential. If Consumers Energy wishes to assert a privilege of business confidentiality, it must nevertheless respond to the question and advise U.S. EPA that it requests that the Agency treat the response as confidential business information. Directions regarding how to assert a claim of business confidentiality are contained in Attachment 4.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question included in this Information Request within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to § 104(e)(5) of CERCLA. Failure to respond and failure to justify the non-response can result in similar penalties under this Section. Further, § 104(e)(5) authorizes the United States to seek penalties from a federal court of up to twenty-five thousand dollars (\$25,000) for each day of continued non-compliance. U.S. EPA considers non-compliance to be not only failure to respond to the Information Request, but also failure to respond completely and truthfully to each question in the Information Request.

The provision of false, fictitious or fraudulent statements or misrepresentations may subject Consumers Energy to criminal penalties of up to ten thousand dollars (\$10,000) or up to five (5) years imprisonment, or both, under 18 U.S.C. § 1001.

U.S. EPA has the authority to use the information requested in an administrative, civil, or criminal action.

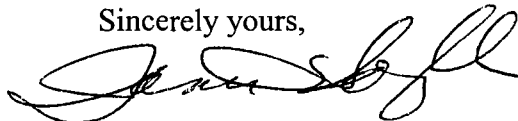
This Information Request is directed to Consumers Energy, its officers, directors and employees, and its subsidiaries, divisions, facilities and their officers, directors and employees. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

Please mail your response within sixty (60) days of your receipt of this Information Request to:

Eileen L. Furey
Associate Regional Counsel
U.S. Environmental Protection Agency C-14J
77 W. Jackson Blvd.
Chicago, IL 60604

We appreciate your effort to respond fully and promptly to this Information Request. If you have any questions about this Information Request, please call either Eileen Furey at (312) 886-7950 or Shari Kolak, the Remedial Project Manager for the Site, at (312) 886-6151.

Sincerely yours,



Janice S. Loughlin
Section Chief
Office of Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Attachment:

1. Requests for Information
2. Instructions
3. Definitions
4. Confidential Business Information

cc: Shari Kolak, SR-6J
Marsha Adams, SR-6J
Eileen Furey, C-14J
Thomas Marks, SR-6J
William Messenger, S-6J
Renita Ford, U.S. DOJ
Mary-Lynn Taylor, U.S. DOI

Attachment 1

INFORMATION REQUESTS

1. Identify all persons consulted in the preparation of your responses to these Information Requests.
2. Identify all documents consulted, examined, or referred to in the preparation of your responses to these Information Requests, and provide copies of all such documents. If, in lieu of or along with a textual response to any specific Request, you refer to a document that you believe contains information responsive to that Request, you must identify the specific location (page number, paragraph number) in the document where responsive information can be located.
3. If you have reason to believe that there may be any person able to provide a more detailed or complete response to any Information Request, or who may be able to provide additional responsive documents, identify any and all such persons.
4. Identify and generally describe each Consumers Energy facility at or near the Site, as that term is defined in Attachment 3 (Definitions). For each Consumers Energy facility, provide:
 - (a) the address of the facility;
 - (b) past and present EPA ID numbers, RCRA numbers, and NPDES numbers for the facility; and
 - (c) the current owner of the facility.
5. Identify all prior owners and operators of each facility, and their dates of ownership and/or operation.
6. Provide copies of all local, state, and federal environmental permits ever granted for each facility or any part thereof (*e.g.*, RCRA permits, NPDES permits, etc.).
7. For each facility, identify and describe all types of monitoring reports, monitoring data, and documentation sent to or received by federal or state regulatory authorities regarding any materials containing hazardous substances used, generated, stored, treated or disposed at or from the facility.
8. Identify and describe the nature of all past and current operations and production processes at each facility. Identify, if available, all current and previous SIC codes associated with each facility.
9. Identify each product produced at the facility. Further identify the mass quantity of each product produced on an annual basis.

10. Identify and describe any and all activities or efforts to take production facilities out of operation, and include the dates of each such activity or effort.
11. For each facility, identify and provide any data, estimates, analyses or other information regarding any material used, treated, stored or disposed that contained or may have contained PCBs. To the extent available, provide all such data, estimates, analyses or other information on an annual basis.
12. For each facility, identify any data, estimates, analyses or other information regarding the concentration of PCBs in any material used, treated, stored or disposed there. To the extent available, provide all such data, estimates, analyses or other information on an annual basis.
13. To the extent not already provided in response to Request #11, provide the following information:
 - (a) the type and quantity, on an annual basis, of any oils or other lubricants used, treated, stored or disposed at each facility that are known or suspected to have contained PCBs;
 - (b) the number, handling and disposition of all transformers and conductors at each facility; and
 - (c) data, analysis and other information regarding leaks, discharges or other releases from any transformer, conductor or other equipment using oils or lubricants at each facility.
14. To the extent not already provided in response to Request #12, identify any data, estimates, analyses or other information regarding the concentration of PCBs in the materials identified in your response to Request #13.
15. Describe the procedures used by you or anyone on your behalf to test PCB concentrations in the materials identified in your response to Requests #11 and #13, above. Include in your response test methods and dates.
16. Describe the procedures followed by you, or anyone on your behalf, to prevent, mitigate or address the release or threat of release of any material identified in your response to Requests #11 and #13, above.
17. Provide a figure delineating the groundwater flow direction on your property.
18. Identify the depth(s) to groundwater at your property.
19. For each production process at each facility, identify and describe each waste stream from its creation to final disposition.

20. For each facility, identify all past and present waste units (*e.g.* underground storage tanks, above ground storage tanks, waste piles, landfills, surface impoundments, lagoons, dry wells, septic systems, floor drains, ponds, pits, machine pits, container storage areas). For each such waste unit identified, provide the following information:
- (a) The location of all past and present waste units whether currently in operation or not.
 - (b) The type of unit (*e.g.*, underground storage tank, lagoon, dry well, etc.).
 - (c) The dates that the unit was in use.
 - (d) The purpose of past and/or present usage (*e.g.*, storage, spill containment, waste disposal).
 - (e) The quantity and type(s) of materials (*e.g.*, manufacturing materials, wastes, hazardous substances, pollutants and contaminants) located in each unit.
 - (f) If the unit is no longer in use, describe how was such unit closed, and what actions were taken to prevent or address potential or actual releases of waste constituents from the unit(s). Include all analytical data from such closure.
21. For each facility, identify any data, estimates, analyses or other information about the presence of PCBs in each waste stream created. To the extent available, provide such information on an annual basis.
22. For each facility, identify any data, estimates, analyses or other information about the concentration of PCBs in each waste stream created. To the extent available, provide such information on an annual basis.
23. For each facility, describe the procedures used by you, your predecessor(s), or anyone on behalf of you or a predecessor, to test the PCB concentration in each waste produced, stored, treated or disposed at that facility. Include in your response test methods, media tested, and dates.
24. For each facility, identify each off-Site location at which wastes that contained or potentially contained PCBs were disposed. Further identify the dates of each such off-Site disposal, and the nature, quantity and PCB concentration of any such wastes.
25. For each facility, and for each waste produced, stored, treated or disposed at that facility:
- (a) identify the PCB concentration of any waste;

- (b) if the waste contained detectable concentration of PCBs, describe each occasion on which a release of such waste occurred or threatened to occur; and
 - (c) describe the procedures and measures taken by you, or anyone on your behalf, to prevent, mitigate or address the release or threat of release of PCBs or other hazardous materials.
- 26. For each release described in response to Request #25 above, describe the quantity of PCB-contaminated wastes that were released or threatened to be released, and state whether any PCBs contained in the wastes contributed to the presence, or threatened to contribute to the presence, of PCBs in the Kalamazoo River.
- 27. For each facility, identify any data, estimates, analyses or other information about the history of flooding, or any other infiltration of water, from the Kalamazoo River.
- 28. To the extent not provided in your response to Request #19, describe each wastewater stream, waste oil stream, and wastewater/waste oil mixture stream at each facility, from its creation in the production process to final discharge point. In your response include a complete description of the fate of any wastewater stream, waste oil stream, and wastewater/waste oil mixture stream produced at each facility (*e.g.* on-site treatment, discharge to a POTW, discharge to a storm sewer outfall, direct discharge to the Kalamazoo River).
- 29. To the extent not provided in response to Requests #19 and #28, identify the quantity of all (a) wastewater, (b) waste oil, and (c) wastewater/waste oil mixture produced, on a monthly basis, from each production process at each facility.
- 30. To the extent not provided in response to Requests #21 and #22, identify any data, estimates, analyses or other information about the presence and/or concentration of PCBs in the wastewater, waste oil and wastewater/waste oil mixture produced from each production process at each facility. To the extent available, provide such information on a monthly basis.
- 31. For each facility, identify any data, estimates, analyses or other information regarding the effectiveness of the treatment system(s) at that facility, if any, to remove PCBs from each wastewater stream, waste oil stream and wastewater/waste oil mixture stream.
- 32. Identify any data, estimates, analyses or other information regarding procedures and measures taken by you, or by anyone on your behalf, to prevent, mitigate or address the release or threat of release of PCBs from wastewater, waste oils, or wastewater/waste oil mixtures to the Kalamazoo River.
- 33. For any POTW identified in response to Request #28, provide, for each facility and on a monthly basis, all information regarding the amount of wastewater, waste oil, and

wastewater/waste oil mixture discharged to a POTW, the concentration of PCBs in the wastewater, waste oil and wastewater/waste oil mixtures discharged to the POTW from that facility and, to the extent such information is available, the PCB concentration in the effluent from the POTW.

34. For each facility, identify each pipe, conduit, storm sewer, sewer line or other outfall that, directly or indirectly, terminates in the Kalamazoo River or its tributaries, past or present, into which treated, untreated or bypassed wastewater, waste oil, or any other waste (including wastewater/waste oil mixtures), from that facility was discharged. Include a figure identifying the source and location of each pipe, conduit, storm sewer, sewer line or other outfall.
35. For each pipe, conduit, storm sewer, sewer line or other outfall identified in your response to Request #34, identify dates of use and each outfall's source at the facility. Further provide, on a monthly basis, the volume of wastewater, waste oil or other waste (including wastewater/waste oil mixtures) discharged from the facility into each pipe, conduit, storm sewer, sewer line or other outfall.
36. For each pipe, conduit, storm sewer, sewer line or other outfall identified in response to Request #34, identify all influent and effluent quality data. Include, to the extent such information is available, the PCB concentration of all influent and effluent, on a monthly basis.
37. For each pipe, conduit, storm sewer, sewer line or other outfall identified in response to Request #34, identify all bypasses or spills into the Kalamazoo River or its tributaries.
38. For each facility, identify any data, estimates, analyses or other information regarding the mass quantity of PCBs disposed into the Kalamazoo River as a result of wastewater, waste oil or wastewater/waste oil discharges from the production processes. To the extent available, provide such information on an annual basis.
39. For each facility, identify any data, analyses or other information regarding the nature and quantity of hazardous substances, including PCBs, in the sediments, soil, groundwater and surface water at that facility. Identify the concentration levels of PCBs for all samples collected at the facility or at any property abutting the facility.
40. For each facility, provide information regarding any environmental response activities involving or potentially involving PCBs or PCB-containing materials conducted at that facility, or on the Kalamazoo River, its tributaries, or other abutting property, at your direction or under your control. Indicate the date(s) on which such response activity was performed, what work was performed, the expenses incurred, the results of the response activity and, if it has not concluded, when the environmental response is expected to conclude.
41. Have you incurred any costs associated with the investigation, remediation or other action

to address contamination at the Site or any portion thereof? If yes, identify all costs incurred by you through the date of this Information Request.

Attachment 2

INSTRUCTIONS

1. Precede each answer with the number of the question to which it corresponds.
2. In answering each question, identify all persons and contributing sources of information.
3. Although the U.S. EPA seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or misrepresentations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. § 9604, authorizes the U.S. EPA to pursue penalties for failure to comply with that Section, or for failure to respond adequately to requests for submissions of required information.
4. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
5. For any document submitted in response to a question, indicate the number of the question to which it responds.
6. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.
7. Your response must be accompanied by the following statement, or one that is substantially equivalent:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information,

including the possibility of fine and imprisonment for knowing violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

8. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
9. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Attachment 4.

Attachment 3

Definitions

1. The term ***you*** refers to Consumers Energy Company, which owns and operates, or formerly owned and operated, several facilities located in Michigan, near or adjacent to the Kalamazoo River, its tributaries or Morrow Lake. The term further refers to the officers, directors and employees of Consumers Energy, its subsidiaries, divisions, facilities, and their officers, directors and employees.
2. The term ***facility*** means all property or properties, including transformers and conductors, previously or presently owned or operated by Consumers Energy Company, or a predecessor thereof, between 1929 and the present, and from which wastes were released (or threatened to be released) by any means into the Kalamazoo River, its tributaries, floodplains or floodplain soils, or Morrow Lake.
3. The term ***person*** as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
4. ***The Site*** referenced in these documents shall mean the Allied Paper/Portage Creek/Kalamazoo River Superfund Site located in Kalamazoo and Allegan Counties, Michigan. Information about the nature and extent of contamination at the Site can be found at www.epa.gov/region5/sites/kalproject.
5. The term ***hazardous substance*** shall have the same definition as that contained in Section 101(14) of CERCLA, and includes any mixtures of such hazardous substances with any other substances, including petroleum products.
6. The term ***pollutant or contaminant*** shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
7. The term ***release*** shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant.
8. The term ***identify*** means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

9. The term *identify* means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
10. The term *identify* means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressee and/or recipient, and the substance or the subject matter.
11. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300 or 40 C.F.R. Part 260-280, in which case, the statutory or regulatory definitions shall apply.

Attachment 4

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information that U.S. EPA is requesting to be confidential. You cannot withhold information or records upon that basis. The regulations at 40 C.F.R. Part 2, Section 200 *et seq.* require that the U.S. EPA afford you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. (*See* 41 Fed Reg. 36902 *et seq.* (September 1, 1976); 43 Fed. Reg. 4000 *et seq.* (December 18, 1985).) If no such claim accompanies the information when U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of CERCLA, because, as stated in Section 104(e)(7)(ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish U.S. EPA to treat the information or record as “confidential,” you must advise U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a separate assertion of confidentiality for each response and each document that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope “confidential,” and identify the number of the question to which it is the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, *e.g.*, until a specific date or until the occurrence of a specific event;
2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether U.S. EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a

determination, enclose a copy of that determination;

5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information;
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. § 2.201(I). If you make this assertion, explain how the disclosure would tend to lessen the ability of U.S. EPA to obtain similar information in the future;
7. Any other information that you deem relevant to a determination of confidentiality.

Please note that pursuant to 40 C.F.R. § 2.208(e), the burden of substantiating confidentiality rests with you. U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. § 2.205(c). If you do not identify this information and documents as “confidential,” your comments will be available to the public without further notice to you.